

Case Summary

Appellant-Defendant Donte T. Paulk (“Paulk”) appeals the sentence imposed following his conviction of Dealing in Cocaine, as a Class A felony.¹ We affirm.

Issue

Paulk presents a single issue for review: whether he was properly sentenced.

Facts and Procedural History

On October 21, 2004, Paulk sold 6.56 grams of cocaine to a confidential informant. On October 22, 2004, the State charged Paulk with Dealing in Cocaine. Paulk was tried before a jury, and was convicted as charged on June 9, 2005. On August 5, 2005, the trial court sentenced Paulk to thirty years imprisonment. Paulk now appeals his sentence.

Discussion and Decision

Paulk argues that he is entitled to a new sentencing hearing because the trial court failed to find mitigating circumstances supported by the record. Alternatively, he requests that this Court revise his sentence, pursuant to Indiana Appellate Rule 7(B), because it is “inappropriate in light of the nature of the offense and the character of the offender.”

In sentencing Paulk, the trial court found the following aggravators: he violated the terms of his probation, he had a criminal history, and he needed correctional and rehabilitative treatment best provided in a penal facility because “his prior lenient treatment has had no deterrent effect.” (App. 53.) Paulk does not challenge the propriety of these aggravators. Rather, he challenges the trial court’s failure to find as mitigating

¹ Ind. Code § 35-48-4-1.

circumstances: his religious conversion, his youthfulness, his need to support his blind grandmother, and the impending birth of his first child.

Paulk received a sentence that was, at the time of his offense, the presumptive sentence to be imposed for a Class A felony.² See Indiana Code Section 35-50-2-4. The Indiana Supreme Court has held that, when a trial court has imposed a presumptive sentence, “it will be presumed on appeal that the trial court considered the proper factors in making its sentencing determination.” Jones v. State, 698 N.E.2d 289, 291 (Ind. 1998). It was within the discretion of the trial court to decide what constituted a “significant” mitigator. See id.

Pursuant to Indiana Appellate Rule 7(B), Paulk also argues that his thirty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. In particular, he points out that he “had found a new direction in life” and was twenty-three years old, expecting a child, and caring for his blind grandmother. Appellant’s Br. at 4.

Concerning the nature of the instant offenses, we observe that Paulk sold six grams of cocaine, more than twice the amount needed to elevate the offense to a Class A felony. The character of the offender is such that prior rehabilitative efforts failed. He had a history of juvenile adjudications beginning at age twelve, and had six criminal convictions as an adult. At the time of the instant offense, Paulk was on probation after having pleaded guilty to

² At the time Paulk committed his offense, Indiana Code Section 35-50-2-4 provided that a person who committed a Class A felony should be imprisoned for a fixed term of thirty years, with not more than twenty years added for aggravating circumstances and not more than ten years subtracted for mitigating circumstances. Indiana Code Section 35-50-2-4 was revised, effective April 25, 2005, and now provides in pertinent part, “A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years.”

Possession of Cocaine. As such, we do not find that Paulk's sentence is inappropriate.

Affirmed.

MAY, J., concurs.

RILEY, J., concurs in result.